

Attention is drawn to the order prohibiting publication of certain information in this determination.

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2019] NZERA 652
3067975

BETWEEN	DKR Applicant
AND	WAIKATO DISTRICT HEALTH BOARD Respondent

Member of Authority:	Rachel Larmer
Representatives:	Blair Edwards and Kate Wilson, counsel for the Applicant Anthony Russell, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions Received:	11 November 2019 from Applicant
Date of Determination:	12 November 2019

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] On 2 October 2019 the Authority issued an interim non-publication order, subject to specified conditions, that was to remain in force pending further order of the Authority.¹

¹ *DKR v WDHB* [2019] NZERA 564.

[2] This determination reviews, varies and finalises the previous interim non-publication order that was issued in respect of this matter.

[3] A random online letter selection tool was used to select the letters “DKR” that were used in this determination, and in the previous interim non-publication order, in place of the applicant’s name.

Changes to interim non-publication order

[4] The parties have advised the Authority that they have now resolved their employment relationship problems by agreement.

[5] As part of that agreement, the parties consented to the Authority varying the interim non-publication order that was issued on 2 October 2019, to remove restrictions on the publication of the applicant’s name and area of practice.

[6] The other restrictions specified in the interim non-publication order dated 2 October 2019, that related to publication of patients’ names and information that would personally identify them, still applies. These interim patient related restrictions now become (in this determination) subject to a final non-publication order.

[7] Accordingly, a final non-publication order is now issued under clause 10(1) of the Second Schedule of the Employment Relations Act 2000 (the Act) that prevents publication, subject to the conditions specified below, of:

- (a) The name of any of the patients whose cases were referred to in these Authority proceedings; and
- (b) Any information that may personally identify any of the patients who were referred to in these Authority proceedings.

[8] This final non-publication order is subject to the following specified conditions:

- (a) It does not apply to any of the information that may be presented to the Health and Disability Commissioner, the Coroner and the Medical Council of New Zealand;

- (b) It does not apply to WDHB's communications with these patients, or these patients' General Practitioners or other medical practitioners/clinicians involved who are, or have been, professionally involved with any of these patients;
- (c) It does not operate to restrict in any way WDHB's ability to undertake any audits or reviews or assessments or follow up of any patients DKR has provided services to while employed by WDHB;
- (d) It does not restrict WDHB's ability to respond honestly and accurately to any queries it may receive from DKR's prospective future employers;
- (e) Any of the patients, whose cases formed part of the evidence filed in these Authority's proceedings, may elect to give their own written consent to the publication of their name and/or information about their care and treatment that may lead to their identification, provided that consent is given prior to any publication of such information occurring; and
- (f) The daughter of the deceased patient may elect to provide written consent to the publication of her father's name and/or information about his care and treatment that may lead to his identification, provided that her consent is given prior to publication of any such information occurring.

[9] The existence of these conditions, including the ability of individual patients to give their prior written consent to publication of their name and/or information identifying them or in the case of the deceased patient then that patient's daughter's ability to consent to the publication of her father's name or information identifying him, as identified in paragraph [8] above, means that publication in these limited defined circumstances will not amount to a breach of this final non-publication order.

[10] As a result of these variations that have been made to the previous interim non-publication order, that was issued on 2 October 2019, from now on DKR can be referred to as Dr Klaus Platz.

Rachel Larmer
Member of the Employment Relations Authority